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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 604

HELEN WEBER,

Petitioner,

vs.

RALPH AOKI, Trustee,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

JAMES M. MORITA

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Attorney for Respondent
Ralph Aoki

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Of Counsel

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Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Ralph Aoki respectfully moves to have this Honorable Court deny the Petition for Writ of Certiorari on the grounds:

1. The Petitioner has failed to fulfill any of the considerations governing review on certiorari as provided in Rule 19 of the Rules of the Supreme Court of the United States.

2. That Petitioner has appealed from two orders denying Petitions for Rehearings in the United States District Court for the District of Hawaii.

3. The referee in Bankruptcy, United States District Court for the District of Hawaii and United States Court of Appeals for the Ninth Circuit were all satisfied that there was no "abuse of discretion."

OPINIONS BELOW

The Order of the District Court of Hawaii denying the first Petition for Rehearing was entered on November 21, 1967 and is set forth in the record at page 71, and Appendix A-1. The Order of the District Court of Hawaii denying the second Petition for Rehearing was entered on December 27, 1967 and is set forth in the record at page 78, and in Appendix A-3.

JURISDICTION

The Notice of Appeal filed on January 18, 1968 (R. 79) to the Ninth Circuit Court of Appeals was from two District Court orders denying rehearings on November 21, 1967 (R. 71) and on December 27, 1967 (R. 78) and is set forth in the record at page 79, and in Appendix A-4.

The Ninth Circuit Court of Appeals does not have jurisdiction on appeals taken from two orders denying petitions for rehearing.

None of the considerations governing review on certiorari has been presented by the Petitioner.

QUESTIONS PRESENTED

1. Whether this Honorable Court has jurisdiction to consider the granting of certiorari when Petitioner:

   a. Has failed to indicate any reasons for granting certiorari as provided in Rule 19 of the Rules of the Supreme Court of the United States:

   b. Has appealed from two District Court Orders denying petitions for rehearing.

2. Whether an appeal lies from an Order, Findings of Fact and Conclusions of Law of the Referee in Bankruptcy affirmed by the District Court of Hawaii and the Ninth Circuit Court of Appeals when there has been no showing of any abuse of discretion.

STATEMENT

The Order of the Referee in Bankruptcy approving the Trustee's Petition for Compromise was filed with the District Court of Hawaii on April 20, 1967 (R. 42).

The Findings of Fact and Conclusions of Law (R. 52) were filed by the Referee in Bankruptcy on July 12, 1967, nunc pro tunc as of April 20, 1967 and in said Findings the Referee found that the litigation would result in the Trustee and his attorney spending considerable time in the proof of claims, the liability of the entire claim not being clearly established and the respective back charges and other counterclaim being made by J. P. Finan General Contractor, Inc. He further stated that it would be advisable and prudent to accept the compromise proposal offered by J. P. Finan General Contractor, Inc.

The District Court of Hawaii entered an Order on September 18, 1967 finding that the action of the Referee was not clearly erroneous and that the counsel for the Petitioner was given every opportunity to go into the details of the proposed compromise and that the Referee was satisfied that the compromise should be approved. (R. 72, Petitioner's Brief Appendix B-1 through B-3)

No Notice of Appeal to the Ninth Circuit Court of Appeals was filed by the Petitioner from the Order entered by the District Court of Hawaii on September 18, 1967 affirming the action of the Referee and the appeal period expired on November 18, 1967.

ARGUMENT

I

THE PETITIONER FAILED TO COMPLY WITH THE REQUIREMENTS OF RULE 19 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

In the present request for review by certiorari the Petitioner has failed to point out any conflict with the decisions of this Honorable Court, failed to show any conflict of decisions among the Circuit Court of Appeals and has failed to show any constitutional question.

II

AN APPEAL DOES NOT LIE FROM THE TWO DISTRICT COURT ORDERS DENYING THE PETITIONS FOR REHEARING.

The Ninth Circuit Court of Appeals did not have jurisdiction to entertain Petitioner's Appeal which was from two District Court orders denying the petitions for rehearing. (R. 79, Appendix A-4)

Conboy v. First National Bank of Jersey City, 203 U.S. 141 (1906).

III

THE NINTH CIRCUIT COURT OF APPEALS WAS SATISFIED THAT THE DISTRICT COURT OF HAWAII DID NOT ABUSE ITS DISCRETION IN CONFIRMING THE ORDER OF THE REFEREE IN BANKRUPTCY APPROVING THE COMPROMISE AGREEMENT WHICH PETITIONER ATTACKS.

General Order 47 of the Bankruptcy Rules specifically provides that unless the Referee's Findings of Fact are clearly erroneous the United States District Court shall accept them.

Contrary to the various allegations made by the Petitioner in her brief it was found by the Referee that it would be advisable and prudent to accept the compromise proposal offered by J. P. Finan General Contractor, Inc. (R. 52). The District Court of Hawaii found that the action of the Referee was not clearly erroneous and confirmed the same (R. 72). The Ninth Circuit Court of Appeals affirmed the action of the United States District Court finding that there was no abuse of discretion. (405 F. 2d 844).

The District Court of Hawaii and the Ninth Circuit Court of Appeals are required to accept the Findings of the Referee in Bankruptcy unless such findings are clearly erroneous.

Farmer Brothers Company v. Huddle Enterprises, Inc., 366 F.2d 143 (C.A. 9, 1966);

Washington v. Houston Lumber Company, 310 F.2d 881, (C.A. 10, 1962);

In re Knollhoff, 239 F. Supp. 927 (D.C. Kan., 1965).

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully denied,

JAMES M. MORITA,

Attorney for Respondent
Ralph Aoki

HIROSHI SAKAI
Of Counsel

APPENDIX

IN THE

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF HAWAII

In the Matter of	)	
WEBER TRUCKING & EQUIPMENT RENTAL, INC.,	)	In Bankruptcy No. 66-185
Bankrupt.	)	

ORDER

At Honolulu, Hawaii, in said District, on the 21st day of November, 1967.

The Petition for Rehearing by Helen F. Weber, filed herein on September 26, 1967 on the Order of the Court entered herein on September 18, 1967 having come on regularly to be heard upon notice duly given to the parties herein and the Trustee Ralph S. Aoki appearing by his attorney Hiroshi Sakai and Helen F. Weber appearing by her attorney John Parks and a hearing having been held and the Court having considered the Petition for Rehearing and the Record and the argument of counsel,

IT IS THEREFORE, ADJUDGED, ORDERED AND DECREED that the Petition for Rehearing by Helen F. Weber be and the same is hereby denied.

DATED: Honolulu, Hawaii, this 21st day of November, 1967.

/s/ C. Nils Tavares

District Judge

IN THE

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF HAWAII

In the Matter of	)	
	)	
WEBER TRUCKING & EQUIPMENT RENTAL, INC.,	)	In Bankruptcy No. 66-185
	)	
Bankrupt.	)	

RULING ON MOTION FOR REHEARING

It appearing to this court that no new matter, not heretofore considered and passed upon by this court, is presented by Helen F. Weber in her "Motion for Hearing" of November 29, 1967, her motion is DENIED, without argument.

DATED: Honolulu, Hawaii, this 27th Day of December, 1967.

/s/ Martin Pence

United States District Judge

IN THE

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF HAWAII

In the Matter of WEBER TRUCKING & EQUIPMENT RENTAL, INC., Bankrupt.	)	In Bankruptcy No. 66-185

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Helen F. Weber hereby appeals to the United States Court of Appeals for the Ninth Circuit from the ruling on Motion for Rehearing entered and filed herein on the 27th day of December 1967 and from the Order entered and filed herein on November 21, 1967.

DATED, Honolulu, Hawaii, this 18th day of January 1968.

HELEN F. WEBER

By /s/ John E. Parks

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412 First National Bank Building
Honolulu, Hawaii 96813

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